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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/766,325      | 01/29/2004  | Laurence W. Davies   | 80210-952 ADB       | 1242             |

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ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER

RUDDOCK, ULA CORINNA

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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1771

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/766,325

Applicant(s)

DAVIES ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6,746,747. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 3, 5, 6, 7, 10-15 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Davies et al. (US 6,881,288). Davies et al. disclose a reinforcing structure for use in the manufacture of a pultruded part (abstract). The part is shown as a hollow, pultruded body having a uniformly spaced outer wall structure, an inner wall structure, and a resin matrix. The reinforcing mat of the present invention is typically located at or near the wall structures to increase transverse strength. The pultruded part is used to make fenestration products such as windows, doors, and the like (col 7, ln 13-25). The reinforcing fibers comprise metal fibers (col 4, ln 6-7). The resin matrix comprises thermosetting materials such as polyurethanes (col 9, ln 49-52). The reinforcing fibers are arranged into a mat that can have two layers of angled reinforcing fibers (col 14, ln 66-67).

5. Claims 1, 2, 3, 5, 6, 7, 10-15 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Davies et al. (US 6,872,273). Davies et al. disclose a method of making a pultruded part having a uniform cross-section using a novel reinforcing mat (abstract). The part is shown as a hollow, pultruded body having a uniformly spaced outer wall structure, an inner wall structure, and a resin matrix. The reinforcing mat of the present invention is typically located at or near the wall structures to increase transverse strength. The pultruded part is used to make fenestration products such as windows, doors, and the like (col 7, ln 24-36). The reinforcing fibers comprise metal fibers (col 4, ln 33-37). The resin matrix comprises thermosetting materials such as polyurethanes (col 9, ln 60-63). The reinforcing fibers are arranged into a mat that can have two layers of angled reinforcing fibers (col 14, ln 38-42).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/78529 (WO '529) in view of Kaiser (US 5,851,468). WO '529 discloses a pultruded part and a method of preparing a reinforcement mat for the part. The improved reinforcement mat is made up of a number of layers, including a layer having fibers which extend transversely of the mat and binding resin for the fibers. The invention is especially useful for pultrusion of parts for fenestration products (pg 1, ln 9-15). The mat and rovings are primarily glass products, while the resin matrix is a thermosetting material (page 1, ln 26-27). Holes are formed in the mat layers which extend through the thickness of the mat layers and receive binding resin therein for increasing the binding effect of the resin upon hardening of the latter (page 4, ln 16-19). It should be noted that the Examiner is equating the holes in the reinforcing mat to be a scrim as required by the present invention. WO '529 discloses the claimed invention except for the teaching that the fibers are made of metal and that the resin is a thermosetting polyurethane.

Kaiser (US 5,851,468) discloses a reinforcing structural rebar comprising an inner core formed by pultruding reinforcing fibers (abstract). The thermosetting resin is preferably a polyurethane (col 3, ln 34-35). The reinforcing fibers include metal fibers (col 10, ln 66). It would have been obvious to one having ordinary skill in the art to have used Kaiser's thermosetting

polyurethane and metal fibers in place of the thermosetting resin and glass fibers of WO' 520, motivated by the desire to create a pultruded article that has a higher tensile strength and structural integrity.

Regarding claims 1, 8, 9, 21, 22, and 23, it has been held that the basis weight of the fibers is a result effective variable. The weight of the fibers will directly affect the strength of the fabric. Therefore, it would have been obvious to one having ordinary skill in the art to have used a fabric having a total quantity of fibers of less than 0.5 ounces per square foot, less than 0.25 ounces per square foot, and less than 0.1 ounces per square foot, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the basis weight of the fibers, motivated by the desire to create a fabric that has increased strength and durability.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700